

**BOARD OF APPEALS CASE NO. 5253**

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**BEFORE THE**

**APPLICANTS: Timothy Maresh & Howard Harrison \***

**ZONING HEARING EXAMINER**

**REQUEST: Special Exception to locate a kennel  
in the Agricultural District; 5004 Graceton Road,  
Whiteford**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 4/24/02 & 5/1/02**

**HEARING DATE: June 5, 2002**

**Record: 4/26/02 & 5/3/02**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicant, Timothy A. Maresh, and the Co-Applicant, Howard Norman Harrison, are seeking a special exception, pursuant to Section 267-53H(3) of the Harford County Code, to allow a kennel in an Agricultural District.

The subject property is located at 5004 Graceton Road, Whiteford, Maryland 21160, in the Fifth Election District, and is more particularly identified on Tax Map 73, Grid 3F, Parcel 13. The parcel contains approximately 73.70 acres.

The Applicant's wife, Brenda Maresh, appeared, and testified that she and her husband lease a portion of the subject property from the Co-Applicant, Howard Norman Harrison. She is familiar with the Department of Planning and Zoning's Staff Report, and has the following corrections to that report. According to the witness, the assertion on page four of the Staff Report, stating that the Applicant previously removed dogs from the site for an inspection, and then brought more dogs back to the site, is incorrect. She stated that during a zoning inspection on February 2, 2001, the Department of Planning and Zoning requested that they remove dogs that had been present on the property for five years. Some of the dogs were removed from the site, however, there were subsequently two litters of puppies born to the remaining dogs.

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Mrs. Maresh testified that the property is located at the Maryland Pennsylvania border on the south side of Graceton Road in Whiteford, Maryland. The property is a 73.78 acre farm with Agricultural zoning. Existing improvements on the property include cropland, a barn and pasture leased to Gross Brothers, and five acres with a two-story farmhouse and surrounding pasture. Other improvements include a large barn, a two-car garage, a one-car garage, a smaller barn with a silo, and an old shed. There is a fenced area between the barn and the shed, and an outdoor run for the dogs.

According to the witness, the housing for the dogs has been recently improved. A new outdoor run has been constructed, and a section of privacy fencing has been installed to replace existing fencing in a portion of this run. In addition, Mrs. Maresh testified that they have recently cleaned up debris previously located in the area where the dogs are kept.

The witness then testified that the Applicants are requesting a special exception for a kennel, which would permit them to keep the nine dogs which they currently own. No more dogs will be brought onto the property. She referred to the site plan, (Staff Report Attachment 3), and indicated that all the dogs are presently housed in the small barn shown on the west side of the property. The area to the left of that barn, designated by dashed lines, is the location of the new outside run. The Applicants plan to keep all the dogs in their present location if the special exception is granted.

According to the witness, the distances between the area where the dogs are housed and the adjoining property lines are 300 feet from the northern property line at Graceton Road, 600 feet from the eastern property line, 800 feet from the southern property line, and 1500 feet from the western property line.

The witness testified that, in her opinion, the proposed kennel would not have any adverse impact to either surrounding properties, or to the neighborhood. She also testified that the feces from the animals are gathered, cleaned up, and disposed of with the livestock waste, or are driven to a dumpster.

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The witness introduced a series of photographs as Applicants' Exhibit 1A-D which depict the inside and outside areas where the dogs are presently housed. Applicants' Exhibit 1A and 1B show an area of fencing in the dog run which has recently been replaced with privacy board fence to cut down on noise when the dogs bark, and to screen the dogs' vision to reduce barking.

The witness next introduced Exhibits 1D, 2A and 2B showing the view toward the property lines in all directions from the area where the dogs are kept. No houses are visible looking toward the west. One house is visible looking toward the northwest, however, it is a considerable distance from the dog run. Two silos but no homes are visible looking north. There are some residential buildings visible to the east, which the witness testified are the closest homes. Several structures are visible to the south, however, they also appears to be a considerable distance away.

Mr. Robert A. Gross, who resides to the north of the subject property along Route 851, appeared and cross-examined Mrs. Maresh regarding the proposed use. His home is located approximately one eighth of a mile from the subject property. Mr. Gross questioned Mrs. Maresh about several of the photographs introduced as Applicants' Exhibits 1 and 2. In response to his questions, she indicated that the new area of privacy fence pictured in Applicants' Exhibit 1A, is 32 feet by 24 feet, and that the pick-up truck frame shown in Applicants' Exhibit 1C has been removed. He also questioned her regarding Applicants' Exhibit 1B, and asked her whether the photo showed the entire inside of the dog run. The witness replied that it did not. Mr. Gross then questioned Mrs. Maresh about Applicants' Exhibit 2B. The witness replied that this photograph shows the view toward the south from the kennel area, and that the property is owned by Charles Davis.

The next witness to testify was the Applicant, Timothy A. Maresh. Mr. Maresh testified that he is asking for a special exception for a kennel to allow him to keep a maximum of ten dogs on the property. This would include the nine dogs currently owned by him, and an occasional extra dog who may visit the property with family members.

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Mr. Maresh stated that Clayton Radcliff, whose property adjoins the subject parcel to the east, is his closest neighbor. According to the witness, Mr. Radcliff's residence is visible in Applicants' Exhibit 2A, and is the only home visible from the area where the dogs are housed. Mr. Radcliff informed him on the night before the hearing, that there was a petition circulating in the neighborhood stating that the requested special exception would allow the Applicants to maintain twenty to thirty dogs on the property. Mr. Radcliff told the Applicant that he had signed the petition in opposition to the Application. However, after being advised by Mr. Maresh that the Applicants were only requesting permission to keep a maximum of ten dogs on the property, Mr. Radcliff provided a letter (Applicants' Exhibit 3) indicating that he is not opposed to the requested special exception, and that he does not have a noise problem with the dogs currently located on the property.

Mr. Maresh testified that in his opinion, the granting of the requested application would have no adverse impact on surrounding properties, as long as the number of dogs is limited to a maximum of ten.

The witness further testified that he has received no complaints from Animal Control since 2001, when he was contacted because there was no straw in the barn for the dogs. The witness testified that he responded by putting straw in the barns, however, the dogs, which are arctic breeds, pushed it out. The witness submitted two articles (Applicants' Exhibits 4 & 5) providing information regarding the breeds of seven of the nine dogs on the property.

On cross-examination, Mr. Gross asked the Applicant whether Mr. Radcliff told him that the person presenting the petition had stated that the requested special exception would allow the Applicants to keep 20 to 30 dogs on the property. The Applicant responded in the affirmative.

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The Co-Applicant, Howard Norman Harrison, was the next witness to testify. Mr. Harrison stated that he is the owner of the subject property, a portion of which is leased to Mr. and Mrs. Maresh, and a portion of which is leased to Mr. Gross. According to Mr. Harrison, the Maryland portion of the property contains approximately 73 acres. Mr. Harrison lives on an adjoining farm, located in Pennsylvania, to the north of the subject property. According to Mr. Harrison, his home is the same distance from the area where the dogs reside as the Gross farm. Mr. Harrison testified that he supports the granting of the requested special exception, and that the dogs on the subject property create no adverse impact to his property. Mr. Harrison also testified that the prevailing winds in this area come from the northwest, and that the sound from the dogs barking carries more in the direction of Mr. Radcliff's property to the southwest, than to Mr. Gross's property in the north.

On cross-examination, Mr. Gross questioned the witness about another kennel located adjacent to his property in Pennsylvania. Mr. Harrison responded that the Pennsylvania kennel is no longer in usable condition.

Mr. Dennis Sigler, from the Department of Planning and Zoning, appeared and testified regarding the findings of fact and recommendations made by that agency. He indicated that the property is zoned Agricultural, which allows for a maximum of five dogs without a special exception for a kennel.

Mr. Sigler also testified that the Department had considered all of the provisions contained in Section 267-91 of the Harford County Code entitled, "Limitations, Guides & Standards" in connection with this request. According to the witness, the proposed facility meets all the criteria contained in the aforesaid Code section with the exception of the following items.

Harford County Code Section 267-91 (1) requires a consideration of "[T]he number of persons living or working in the immediate area." Mr. Sigler stated that there have been numerous complaints about the number of dogs on the property from other residents in the area.

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Section 267-9I(3) requires a consideration of “[T]he orderly growth of the neighborhood and community and the fiscal impact on the County.” Mr. Sigler testified that, based on the extensive history of zoning violations on this property, and reports from County inspectors, including Animal Control, the Department has concerns about the fiscal impact which could be caused by the “anticipated need to continuously inspect the property if the approval is granted.”

Section 267-9I(4) requires a consideration of “[T]he effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of the surrounding properties.” The witness reiterated that his Department has received “numerous complaints” regarding the number of dogs on the property from other residents in the area, and that the noise from their barking carries further than usual in this area because it is primarily cropland.

Section 267-9I(6) requires a consideration of “[T]he degree to which development is consistent with generally accepted engineering and planning principles and practices.” Mr. Sigler testified that Animal Control has visited this site on numerous occasions and has “concerns regarding the manner in which the dogs are housed and cared for.”

Mr. Sigler stated that, in his opinion, the proposed use at the proposed location would result in an adverse impact to adjacent properties because of noise caused by the barking of the existing nine dogs. He also opined that the proposed kennel at this location would have a greater impact on adjacent properties than if it were located in any other area within an Agricultural District, because there is very little tree cover, and there are no valleys to muffle the barking. In addition, the area where the dogs are housed sits up on a knoll, so sound carries further from this location than it would from a low lying area. He stated that, because the area is primarily cropland, the plantings may muffle the sound during the growing season, but once the crops are harvested in the fall, there would be no vegetation to muffle the sound.

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When asked by the Hearing Examiner if the proposed use is consistent with the general purpose of the Master Plan, the witness stated that ordinarily the answer to this question would be yes, because kennels are permitted in Agricultural Districts. However, in this case, he believes the proposed use is not consistent with the general purpose of the Master Plan because of the location of the use, and the noise emanating from the dogs disturbing residents of adjacent properties. Mr. Sigler testified that, for the above-stated reasons, the Department of Planning and Zoning had recommended denial of the application in this case.

Mr. Sigler was cross-examined by Mr. Maresh as to whether he thought there would be significantly less noise if there were only five dogs, as opposed to the current nine dogs present on the property. The witness replied that, in his opinion, noise levels increase with over five dogs. Mr. Maresh also asked the witness whether he was aware that there is another kennel located within five miles of the property in an area almost identical to the subject location. The witness responded that he is aware of this use, however, the kennel is actually a veterinary clinic, which does not house dogs on a long term basis.

Mrs. Maresh cross-examined the witness as to whether he was aware of the date of the first zoning investigation regarding the subject property. The witness stated that he did not have the Zoning Enforcement file with him, however, as his first visit to the property was in May 2002, he has no personal knowledge of any prior zoning enforcement actions.

The Co-Applicant, Mr. Norman Harrison, cross-examined Mr. Sigler, regarding the identity of those who had filed complaints with his Department. Mr. Sigler replied that the complaints were made by way of anonymous telephone calls, which is permitted by statute.

The next witness to testify was Pamela Arney, an employee of Harford County Animal Control. Ms. Arney stated that her Department has been involved in an ongoing investigation regarding the dogs on the subject property since July 30, 2001. She described an incident in which one of the Applicant's dogs died after becoming entangled in a fence. According to the witness, the Applicant left the carcass there for approximately five to six days before it was removed by an adjacent property owner. She introduced photographs (Protestant's Exhibits 1-3), dated September 20, 2001, which depict the body of a dead dog ensnared in a fence.

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The witness next testified that she responded to 24 separate complaints regarding the subject property between May 29, 2001 and May 6, 2002. During some of those visits she observed a dog chained to the barn with feces piled up around it, and dogs with either no water or very dirty water. She observed goat and chicken carcasses lying around in the area where the dogs are kept on numerous occasions. Ms. Arney stated that she is concerned about potential health hazards to the animals, and testified that if the subject application is granted, it may cause problems for Animal Control because of an anticipated need for constant monitoring of the property.

On cross-examination, Mrs. Maresh questioned the witness as to why the Department of Animal Control did not follow up with him after its first visit to the property five and one-half years ago. The witness replied that, the original complaint had been turned over to the Department of Planning and Zoning for resolution.

Mr. Maresh cross-examined the witness as to whether she was aware that a Mr. Ziegenhorn, from her Department, had previously seen the now deceased dog, shown in Protestant's Exhibits 1 through 3, housed in a goat pen on the property. The witness stated that she had no knowledge of this fact.

Mr. Robert Gross, who also leases a portion of the subject property from Mr. Harrison, appeared and testified in opposition to the application. The witness stated that his family lives in a farm to the northwest portion of the subject property. He raises cattle on the subject property and he and his brother do most of the feeding at the barn where the dogs are kept. He indicated that he has asked the property owner, Mr. Harrison, on numerous occasions, to do something about all the dead animals lying around in the area where the dogs are housed. The witness's family business uses the pasture by the barn for holding pregnant heifers. The dog tied next to the barn frightens the cows with its constant barking. He further testified that the other dogs also bark frequently, and causes significant amount of noise which also frightens his cattle. Mr. Gross then testified that he has concerns regarding the conditions under which the dogs are kept. They frequently escape from their enclosures and run through the fields where his cows are kept. He has repeatedly asked both Mr. and Mrs. Maresh, and Mr. Harrison, to make sure the dogs are kept fenced in an enclosed area.

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Mr. Gross introduced, and described, a series of photographs as Protestant's Exhibits 4 through 9. Protestant's Exhibit 4 shows a corn crib attached to the building where the dogs are kept, which houses numerous ducks and chickens. Protestant's Exhibit 5 is a photograph of two large dogs kept in a small fenced area between the barn and the shed. The witness disputed Mrs. Maresh's testimony that the dogs are no longer kept in that area, and stated that they were there at 6:30 a.m. on the day of the hearing. Protestant's Exhibit 6 shows a single dog tied next to a barn and silo on the subject property. Mr. Gross testified that this dog barks continuously, and frightens his cattle when they are trying to eat in the barn.

Protestant's Exhibit 7B is a picture of two llamas which the Applicants keep tied to a fence surrounding the pasture where Gross Brothers' cattle are kept. Protestant's Exhibit 7A shows another llama which is housed in a pasture on the Co-ApPLICANT, Mr. Harrison's, farm in Pennsylvania. In response to questions from the Hearing Examiner, the witness acknowledged that the llamas are not relevant to the subject application.

The witness then introduced two photographs (Protestant's Exhibits 8A and 8B) of an existing kennel located on Mr. Harrison's farm in Pennsylvania. When asked by the Hearing Examiner about the relevance of these photographs, the witness stated that he was attempting to show that there was other housing available for the Applicants' dogs. He did admit that the dogs are owned by Mr. and Mrs. Maresh, and not by Mr. Harrison.

Protestant's Exhibit 9 is a photograph, taken May 5, 2002, of the barn where the dogs are kept. The barn used to be locked leaving the dogs with no way to get outside, however, the witness confirmed Mrs. Maresh's testimony that accommodations have now been made to provide the dogs with free access to the outside.

Mr. Gross testified that he notified Animal Control about the dog which died after becoming entangled in a fence. He first observed the dead dog on September 20, 2001, but stated that the carcass remained in the fence for approximately three weeks before he removed it.

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Mr. Gross then attempted to admit a petition allegedly signed by various neighbors into evidence. The petition was not admitted by the Hearing Examiner because none of the signers were present, and they were, therefore, not available for cross-examination by the Applicants.

In response to cross-examination by Mr. Maresh, Mr. Gross testified that he has rented a portion of the subject property from the Co-Applicant, Mr. Harrison, for approximately three years, and that the Applicants, and the dogs, have resided on the property since before that time.

Mrs. Maresh cross-examined Mr. Gross regarding his assertion that the conditions under which the dogs are kept have an adverse impact on his cattle. She asked whether a veterinarian had examined the cattle to verify this claim. The witness replied that he did not need a veterinarian to tell him when his cows were having problems. Mrs. Maresh then asked the witness whether he was aware that diseases do not cross between difference species of animals. The witness responded that he had no knowledge regarding this fact. Finally, Mrs. Maresh asked the witness whether he was interested in purchasing the subject property from Mr. Harrison. The witness responded that he would like to purchase the property if it ever becomes available.

### **CONCLUSION:**

The Applicants are requesting a variance pursuant to Section 267-53H(3) of the Harford County Code to allow a kennel in an Agricultural District.

The relevant provisions of the Harford County Code with regard to special exception uses are set forth below.

Section 267-51 of the Harford County Code provides:

“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

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**Section 267-52 of the Harford Code provides:**

**“General Regulations**

- A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.**
- B. A special exception grant of approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.**
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.**
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.**
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”**

**Section 267-53H(3) of the Harford County Code reads as follows:**

**“Kennels.**

**These uses may be granted in the AG, VB, B1, B2 Districts, provided that all buildings for the shelter of animals and all runways shall be located at least 200' (two hundred feet) from any lot line.”**

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**Section 267-9I of the Harford County Code states:**

**“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:**

- (1) The number of persons living or working in the immediate area.**
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.**
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.**
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise on the use of surrounding properties.**
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.**
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.**
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.**
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.**

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- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.
- (10) The preservation of cultural and historic landmarks.

The Court of Appeals established a standard for determining whether to grant a special exception in the case of Schultz v. Pritts, stating that:

“...[t]he special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any facts or circumstances negating the presumption. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood* would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden.” (Emphasis in original) 291 Md. 1, 11, 432 A.2d 1319 (1981).

In their case-in chief, the Applicants adduced testimony showing that the proposed use meets the basic prescribed standards and requirements necessary for granting the requested special exception. As previously stated, Harford County Code Section 267-53H(3) allows the granting of a special exception for a kennel to be located in an Agricultural District if all buildings for the shelter of animals, and all runways, are located at least 200 feet from any lot line. The Applicants presented testimony from the Applicant's wife, Ms. Brenda Maresh, that the subject property is a 73.78 acre farm with agricultural zoning. The closest adjoining property line, from the area where the dogs are housed, is 300 feet to the north. The closest property line to the east is 600 feet away, the closest property line to the south is 800 feet, and the closest property line to the west is 1500 feet away.

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Mrs. Maresh introduced photographs showing the view in all directions from the area where the dogs are housed. One home is visible toward the western property line, however, it is a considerable distance from the dog run. No homes are visible looking northward. There are some residential buildings visible to the east, which Ms. Maresh testified are the closest homes to the area where the dogs are kept. One structure is visible to the south, however, it appears to be a considerable distance away.

The Applicant, Timothy Maresh introduced a letter from his closest neighbor, Mr. Clayton Radcliff, whose property adjoins the subject property to the east. Mr. Ratcliff indicated in that letter, that he is not opposed to the granting of the subject request, and that he does not have a problem with noise from the dogs currently located on the property. The Co-Applicant, Mr. Norman Harrison appeared and testified that he resides on a farm adjoining the subject property to the north, and stated that the existing dogs have no adverse impact on his property. Mr. Harrison also testified that his home is closer to the area where the dogs are housed than the farmhouse leased by Mr. Gross. According to Mr. Harrison, the prevailing winds in the area of the subject property blow from the northwest, and any noise from the dogs barking carries more in the direction of Mr. Radcliff's property to the southwest than to Mr. Gross' home to the north.

The Hearing Examiner must, therefore, determine whether the proposed use could be conducted without real detriment to the neighboring properties and without actually adversely affecting the public interest.

Mr. Robert Gross, who rents a portion of the subject property from the Co-Applicant, was the only neighbor to testify in opposition to the application. He stated that Applicant's dogs bark constantly, frightening his cows in the pasture, and in the barn, next to the area where the dogs are housed. There was also extensive testimony both from Mr. Gross, and from Harford County Department of Animal Control representative, Pamela Arney, concerning Applicants' alleged gross neglect of his existing dogs. Both of these witnesses expressed concerns about potential health hazards to the animals as a result of these conditions. Ms. Arney testified that her department has been involved in an active investigation regarding treatment of the dogs since May 2001.

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As repugnant as the descriptions concerning conditions under which Applicant's dogs are kept may be, the legal standard to be applied in evaluating adverse impact for purposes of granting or denying a special exception, involves adjudging only *off-site* impacts of the proposed use, and not on-site effects. Hayfields, Inc. v. Valleys Planning Council, Inc., 122 Md. App. 616, 648, 716 A.2d 311 (1998) (emphasis added). Therefore, neither the conditions under which the dogs are housed, nor Mr. Gross' testimony concerning the dogs frightening cows which also reside on the subject property, are within the scope of the hearing examiner's consideration of the subject case. Rather, a determination must be made as to "whether neighboring properties in the general neighborhood would be adversely affected, and whether the use in the particular case is in harmony with the general purpose and intent of the plan." Schultz, supra at 291 Md. 1, 11, 432 A.2d 1319.

In determining whether use is in harmony with Plan, the Hearing Examiner is required to consider the following nine specified in Section 267-9l of the Harford County Code, which has been set forth in full earlier in this decision. The Hearing Examiner agrees with the Department of Planning and Zoning that most of the specified factors are not relevant to this request.

The relevant factors will now be discussed individually as they pertain to the subject case.

***(1) The number of persons living or working in the immediate area.***

The subject property is located in sparsely populated farmland, and the proposed use will not contribute to congestion or overcrowding in the area. The fact that the area is not densely populated necessarily means that the number of persons exposed to any adverse impact at this location will be greatly reduced.

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- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the county.***

Mr. Sigler testified that, based on the extensive history of zoning violations on this property, and reports from County inspectors, including Animal Control, the Department has concerns about the fiscal impact which could be caused by the “anticipated need to continuously inspect the property if the approval is granted.” The Hearing Examiner finds it difficult to see how granting the requested special exception would cause a greater need to continuously inspect the property. Even if the application is denied, there will presumably be five dogs remaining on the property. Assuming that the charges concerning neglect of the dogs are correct, there will still be a constant need to monitor the property to insure that the remaining dogs are properly cared for.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise on the use of surrounding properties.***

Mr. Sigler testified that the Department of Planning and Zoning has received numerous complaints regarding noise generated by the existing nine dogs. However, he did acknowledge that there is an approved kennel located within five miles of the subject property in an area with almost identical topography and terrain. Also, as previously stated, if the special exception is denied, there will presumably be five dogs remaining on the property, and the remaining dogs will likely continue to bark. It should be noted here that the Applicant has recently taken steps, such as the erection of a privacy fence, to reduce both the dogs barking and the noise generated by their barking.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.***

Mr. Sigler testified with regard to this factor that Animal Control has visited this site on numerous occasions and has “concerns regarding the manner in which the dogs are housed and cared for.” However, as previously stated, this issue is beyond the permissible scope of the Hearing Examiner’s decision in this case.

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If particular types of impacts, such as those set forth in Harford County Code Section 267-9I, are required to be considered in evaluating a special exception, the impacts are to be measured by the test set forth in test in Schultz, supra. Harford County v. Earl E. Preston, Jr., Inc., 322 Md. 493, 588, A.2d 146 (1965). The Schultz held that “the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327; citing, Anderson v. Sawyer, 23 Md. App. at 624-25, 329 A. 2d at 724 (1974) and Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31, 214 A.2d 146 (1965).

The pivotal question in this case is, therefore, whether the noise from Applicant’s barking dogs causes more of an adverse impact at the proposed location than it would if the use were located elsewhere within the Agricultural District. The question is not whether the use would have any adverse effect, because some adverse effects are implied by the fact that kennels are allowed in Agricultural Districts only as special exceptions, rather than as permitted uses.

Mr. Sigler presented the only testimony relevant to the above issue. He stated that barking carries further at this location than it would in other areas within the Agricultural District because the area is primarily cropland. Although he also testified that plantings would muffle the sound somewhat during the growing season, he indicated that there is very little tree cover in this area, and that there are no valleys to muffle the barking. In addition, the area where the dogs are housed sits up on a knoll, so sound carries further from this location than it would from a low lying area. However, when providing for kennels to be allowed in an Agricultural District by way of special exception, the legislature certainly anticipated that much of the land contained within that district would be open cropland.

## **Case No. 5253 – Timothy Maresh & Howard Harrison**

It must also be noted that the area where the dogs are housed is 300 feet from the closest property line, which is to the north. This is 100 feet further away than the minimum distance required by Harford County Code Section 267-53H(3). Mr. Harrison, whose property adjoins the subject property on the north, testified in support of the application. The next closest property line is to the east, 600 feet away from the area where the dogs are kept. The owner of that property, also presented evidence, by way of a letter stating that he is not opposed to granting the proposed use. The other two property lines are 800 feet and 1500 feet away from the area where Applicant's dogs are housed.

The Hearing Examiner finds it significant that the only neighbor who appeared in opposition to the application was Mr. Gross, who as previously noted, expressed concerns about conditions existing on the subject property itself. Assuming, arguendo, that these complaints were within the permissible scope of the Hearing Examiner's consideration, the fact remains that Mr. Gross' complaints centered primarily around the barking of one particular dog, who is kept tied to the barn adjacent to area where his cows are kept. If the subject request was denied, and the Applicant was forced to remove four of his nine dogs, there is no guarantee that the offending dog would be removed from the property.

If the dogs in question are actually creating an adverse impact on adjoining properties, then it seems that other neighboring property owners would have appeared in opposition to the request.

For the foregoing reasons, the Hearing Examiner recommends approval of the subject request based on the following conditions:

1. That the total number of dogs on the subject property be limited to nine (9).
2. That all dogs on the property shall be kept within the existing indoor and outdoor runs, and none of the dogs shall be maintained within any other area on the property.
3. That the special exception be limited to the Applicant only, and may not be transferred to any subsequent resident or purchaser of the subject property.

Date JULY 16, 2002

Rebecca A. Bryant  
Zoning Hearing Examiner